THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION No.6628 of 2005

DATED: 04-04-2006

Between:

Rafiq Sultana . . .Petitioner

And

Nagarjuna Dist. Coop. Marketing Society Ltd . . .Respondent

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION No.6628 of 2005

O R D E R:

By means of filing this writ petition under Article 226 of the Constitution of India, the petitioner seeks a Mandamus directing the respondent for allotment of a shop on the main road from out of 16 shops in C.M.S.Shopping Complex, Huzurnagar, Nalgonda District, in her favour.

It is well settled that a writ in the nature of Mandamus can be issued provided the writ petitioner establishes the existence of a legal right in himself and a corresponding legal duty in the respondent.

The petitioner asserts that the respondent society sustained loss, is in debts and is liable to pay arrears of salary and GPF to its employee. The respondent society had 18 shops, out of which, it offered to alienate 16 shops at Rs.45 lakhs. The respondent informed her that the shop occupied by her would be removed for the purpose of passage. The said shop was earlier leased out to one Mr. M.Ramakrishna. The petitioner obtained the said shop on lease from him by paying Rs.1,15,000/- towards goodwill. The respondent is intending to dismantle the shop occupied by her. Therefore, the petitioner filed this petition seeking a direction to the respondent for allotment of a shop on the main road in her favour.

The respondent filed a counter-affidavit stating that earlier, the shop in question was leased out to Mr. M.Ramakrishna for a period of 100 months from 15-06-1998 by collecting Rs.70,000/- as non refundable deposit towards cost of construction and on a nominal rent of Rs.200/- per month. The lease period would be expired on 14-10-2006. While so, the said shop was taken over by the petitioner and the same was accepted by the society as per the terms and conditions contained in the lease agreement. With a view to meet the payment of retirement and retrenchment benefits to its 48 employees, who have not been paid even a single pie, shops were put to sale. The society

got 2275 sq.yards of land, in which 14 shops were constructed facing main road leaving place for erecting the gate in between 14 shops. The original lessee

M r . M.Ramakrishna approached the Management requesting for construction of a shop in the place meant for gate. By constructing a shop, the said place was given to him on lease as referred to above. Therefore, allotment of one shop to the petitioner, whose lease would expire on 01-10-2006, does not arise. The respondent society's financial position has become lean and the accumulated loss is Rs.246.86 lakhs. Out of the sale proceeds, the society has to pay the terminal benefits of 34 employees apart from retirement benefits of 14 employees, who were retired on attaining the age of superannuation. This situation necessitated the respondent to sell the shops.

Except stating that the petitioner is eking out her livelihood out of the shop, which was obtained on sub-lease from Mr.M.Ramakrishna, the learned counsel for the petitioner is not able to convince the Court about the right, if any, of the petitioner for allotment of a shop in her favour.

If the petitioner has any leasehold right over the said property, the same cannot be resolved under Article 226 of the Constitution of India, and it can be decided only by a Civil Court in an appropriate proceedings.

The writ petition fails and is accordingly dismissed. There shall be no order as to costs.

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(A.GOPAL REDDY, J)

4th APRIL, 2006.

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